

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 343 OF 1986

with

CIVIL APPLICATION NO.5785 OF 1996

in

SPECIAL CIVIL APPLICATION NO. 343 OF 1986

For Approval & Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the reporters or not ?
 3. Whether their lordships wish to see the fair copy of the judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
 5. Whether it is to be circulated to the Civil Judge?

SHRI ARVINDBHAI M PATEL
VERSUS
STATE OF GUJARAT & ANR.

Appearance:

MR PH PATHAK for Petitioner
MR SK JHAVERI for Resondents

Coram: MR.JUSTICE S.K. Keshote,J

Date of decision:15/10/1999

C.A.V. JUDGMENT

#. The petitioner, by this Special Civil Application under Article 226 of the Constitution of India is praying for relief (i) to issue writ in the nature of mandamus and/or certiorari and/or any other appropriate writ, order or direction declaring the impugned action of the respondent of giving artificial breaks on 30th day as illegal, invalid and inoperative in law, (ii) to direct the respondents to pay the wages for the artificial breaks and to grant all benefits as per law considering the petitioner in continuous permanent services from the initial date of appointment. As usual, prayer has also been made for grant of interim relief, of restraining the respondent from terminating, discharging or otherwise discontinuing the service of the petitioner and to restrain the respondents from giving artificial breaks on 30th day.

#. This writ petition has come up for hearing in the Court on 21st January 1986. The order dated 21st January 1986 reads as under:

Rule. Notice regarding interim relief to be made returnable on 4.2.86. In the meanwhile status quo to be maintained.

Thereafter this interim relief was ordered to be continued and it was made to continue till further orders.

#. Civil Application No.5785 of 1996 came to be filed by petitioner in which prayer has been made to declare the action on the part of the respondents orally terminating the services of the petitioner w.e.f. 10.3.86 as arbitrary, illegal and be pleased to quash and set aside the same and direct the respondents to reinstate the petitioner in service with all consequential benefits. This Civil Application has been replied by the respondent No.2. In the reply it is stated that the applicant-petitioner was not employed in any form with the respondents after 4.10.85. It has further been stated that the petitioner was not in service of respondent No.2 when he preferred this special civil application nor he was continued after the order of interim relief about status-quo came to be served. The application made by the petitioner that the order of this Court is flouted by respondent No.2 has been denied. A

positive statement has been made on oath after verifying from the record that the applicant-petitioner has not worked after 4.10.85 with respondent No.2. So far as the fact regarding Recovery Application No.91/90 is concerned, it is stated that the certificate relied therein is alleged to have been issued by the Executive Engineer and as the amount involved therein was small the Panchayat decided to pay the amount so determined, but when this application came to be filed, inquiry was made and it was found that the certificate alleged to have been issued could not have been issued. His services were terminated from 4.10.85. Reply filed by the respondents to the civil application has not been controverted. Many other important facts have been disclosed in the reply to the civil application. These facts remained uncontroverted. Issue has also been raised that adequate remedy for the petitioner is to raise industrial dispute. In the reply to the civil application another fact has been stated that the special civil application is filed on 21.1.86, and the reply-affidavit is filed on 3.2.86 in which it is stated that the petitioner is not in service since 5th October 1985. From the reply to the special civil application I find that reply has been filed on 3.2.86 and in para-3 it is stated:

3. The petitioner, appears to have obtained orders for admission of the petition on 21st January, 1986 but failed to disclose the fact that the petitioner is no longer in employment since 5th October, 1985, is not at all an employee of this Panchayat after 4th October, 1985. It is, therefore, submitted that there is no question of termination of his services in future on the day of passing the order by this Hon'ble Court. Hence, there is no question of issuing any temporary injunction against termination of his services.

#. Rejoinder to the reply has been filed by petitioner in the special civil application and this fact has been controverted by stating that the Labour Court decided otherwise. The Labour Court's decision has been challenged by respondents by filing additional affidavit.

#. However, the fact remains that the petitioner's services were brought to an end as per his own case from 10th March 1986. Irrespective of the fact whether he continued or not after 5th October, 1985, it is now petitioner's own admitted case that with effect from 10th March 1986, his services were brought to an end and now

by the civil application he is praying for amendment to challenge that termination. This civil application is filed in the year 1996. The petitioner is a workman and the respondent is an industry. He is challenging the termination order after about ten years of the same. The petitioner could have raised industrial dispute also. Looking to the disputed questions of facts which are there in the special civil application, otherwise also, for the relief of the nature as prayed for by petitioner in the civil application to be incorporated in the special civil application by amendment, the only efficacious and adequate remedy is to raise industrial dispute. Moreover, after termination of services of the petitioner, prayers made in para-10(a) and 10(b) now no more survive. These disputes can also be raised by petitioner while challenging the action of respondents to terminate the services as per the petitioner's own case with effect from 10th March 1986. I do not find any ground to permit the petitioner to challenge the termination order on the ground that against this action he has adequate efficacious alternative remedy provided under the statute. This application has been filed after about ten years of the order of termination of services and this is another ground for which this civil application cannot be allowed.

#. In the result, the civil application fails and the same is dismissed. As a result of aforesaid discussion, now nothing substantial survives in the special civil application and the same is also dismissed. Rule discharged. Interim relief earlier granted by this court is vacated. However, dismissal of the special civil application and civil application will not come in the way of the petitioner to raise industrial dispute, if he so desires. No order as to costs.

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[sunil]